
Khitish Chandra Acharya Chowdhury and others Vs Osmond Beeby

Suit No. 965 of 1906

Court: Calcutta High Court

Date of Decision: May 16, 1911

Final Decision: Dismissed

Judgement

Harington, J.

This suit has been set down for trial on a preliminary point, namely, in order that it may be determined whether, on the facts

which are common ground between the parties, the suit can succeed or whether it must not be dismissed. The claim is that a certain account be

investigated, and five several sums which were allowed to the Defendant in this account be refunded. The Defendant was the administrator

pendente lite in a certain suit under an order which entitled him to a commission on the assets at the rate of 2 per cent. The particular sums claimed

in this case appear in the account. The first is under the date 27th August 1901 and the last in February 1904. The allegation of the Plaintiffs is that

these items are improper charges, and therefore the account ought to be reopened, and these items refunded. Now there is no allegation that the

Defendant has been guilty of anything of the nature of a fraud or dishonesty. It is part of the Plaintiff's case that the items in question appear in the

accounts which were filed by the Defendant as administrator pendente lite, and were in due course allowed and passed by the Court. The

complaint which the Plaintiff makes as regards the first item is that the commission ought not to have been allowed on the assets, but on the balance

left of the assets after satisfying the claims which various banks had on them. As to the second item the complaint is that commission has been

charged on an overvaluation of the deceased's share in joint property. As to the third item it is said that the commission charged has been

calculated on a higher value than that given in the affidavit of valuation. Then as to the fourth item it is said that the commission has been charged

upon the property without a sufficient specification of the property on which the commission is charged being given. And, lastly, the fifth ground of

complaint is that commission has been charged on the gross collections, and it is said it ought to have been charged on the net collections, which

would have been considerably less. The position which the Defendant, as administrator pendente lite, occupied with relation to the Plaintiff or

rather to the person through whom the present Plaintiff claims was that he was bound to render an account of all his dealings with the property

during the time he occupied the office to which he was appointed. The Plaintiff or rather his predecessor was entitled to call upon him to account.

But when the Defendant has accounted, it appears to me that he has discharged the duty that lay upon him as long as his accounts are complete

and as long as the account is honest and contains neither any false or fraudulent entries, or as long as there are no omissions. I confess that where

the Defendant has accounted in the presence of the parties who are entitled to call on him to account and those parties have had the opportunity of

being heard, and when those accounts have, in the presence of those parties, been passed by the Court, I cannot see on what principle the

Defendant can be called upon to account over again unless there has been fraud, mistake or some omission. The case of *Seagram v. Tuck* 18 Ch.

D 296 (1881) which was referred to in the course of the argument is distinguishable, because in that case the Defendant was called upon to

account for a sum which had been omitted from his accounts, and had never been accounted for. In that case the Defendant could not answer "" I

have accounted,"" because the particular sum in respect of which the suit was brought did not appear in the accounts at all, and he had neglected to

do his duty to the Plaintiff in that suit by not accounting for it. Here it is conceded that every item of which the Plaintiff now complains appears in

the account which was rendered by the Defendant. No case was cited in the course of the argument as an authority for the proposition that the

Court could reopen accounts which had been properly passed in the presence of the parties, in the absence of either omission, fraud or mistake,

because the party now desires to say that the sums which were allowed by the Court for commission ought to have been calculated on a different

principle from that which the Court allowed when the accounts were in due course before it. In my view therefore the present suit will have to be

dismissed, because the accounts have been passed by the Court in the presence of the parties, and there is no allegation that the order of the Court

in passing those accounts was obtained by fraud or by the suppression of any material fact. If the parties objected to the principle on which the

commission was allowed, they ought to have objected when the accounts were before the Court. For these reasons the suit must be dismissed with

costs on scale No. 2.